

Examination
P 206
Statement

March 24, 1950

M E M O R A N D U M

RE: Documents of the Bureau of Corporations

President Theodore Roosevelt in 1909 forcibly and successfully resisted the acquisition by the United States Senate of records of the Executive Departments of the Government and thereby established an unequivocal policy in relation thereto.

On January 4, 1909 the Attorney General was directed by a Senate resolution to advise whether legal proceedings had been instituted against the United States Steel Corporation on account of the absorption by it of another corporation and to advise his reasons for non-action if in fact there was none.

Thereafter, on January 6, 1909, President Roosevelt in a special message to the Senate stated the Attorney General had advised him there was insufficient grounds for legal action against the Steel Corporation.

The Senate thereafter being unable to secure documents from the Attorney General in regard to this matter summoned Herbert Knox Smith, Head of the Bureau of Corporations before it and ordered him to produce certain papers and documents under penalty of imprisonment if he refused. Mr. Smith reported this to President Roosevelt who ordered him in writing to turn

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the papers over to him.

President Roosevelt then declared he had the papers and that the Senate should not have them; that his impeachment would be necessary in order to get the papers and that he had so informed Senator Clark. He said the Senator had told him that the Senate wished to exercise its prerogatives but if the papers were of such a nature they should not be made public then the committee was ready to endorse the President's views. President Roosevelt stated "Some of these facts which they want, for what purpose I hardly know, were given to the Government under the seal of secrecy and cannot be divulged, and I will see to it that the word of this Government to the individual is kept sacred." (The Letters of Archie Butt, Personal Aide to President Roosevelt, by Abbott, pages 305-306.) See also The President--Office and Powers, by Corwin, pages 281 and 428.

is rather a time for stern rebuke of such antics and outspoken support of the distinguished public servants against whom they are directed.

"Henry L. Stimson

"Huntington, L. I., March 24, 1950"

Senator Tydings. Thank you, General.

Have you any questions, Senator Green?

Senator Green. No questions.

Senator Tydings. Senator Hickenlooper, have you any questions?

Senator Hickenlooper. Yes, I would like to ask a few questions.

General McGrath, you have made it clear that you in your authority over your Department will not give this subcommittee access to the loyalty and investigative files in the specific list of names that have already been requested.

Attorney General McGrath. I am prevented from doing so by the President's executive order. I speak in this regard for myself. The President has not directed me to turn over the files, and only on a presidential direction would I do so.

Senator Hickenlooper. I am referring to your statement. I do not want to labor this point, but I am merely stating my conclusions. On page 5, near the bottom, and it is all through there, through several pages, you refer to these precedents on which refusal has been made, and I take it

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now that that is your position.

Attorney General McGrath. Yes, sir.

Senator Hickenlooper. Do you take the position, General McGrath, that the turning over of these files to a subcommittee of the Senate which has made no suggestion that under any circumstances it would attempt to make any part of these files public, is considered a substantial risk, that the integrity involved is such that the risk would be great of surreptitious disclosure of the contents of those files?

Attorney General McGrath. The risk can be one of degree, depending on the type of committee, of course. The thing that is important is to not break the principle, because when the principle is broken for one committee there is no way that you can refuse other committees of the Congress. The executive offices of the Government are not in a position to judge between the integrities of members of varying committees that may be appointed by the Congress from time to time.

Senator Hickenlooper. Do you know how many clerks and other minor officials have access to these confidential files in the Department of the Federal Bureau of Investigation, or agents or others who are employees?

Attorney General McGrath. I will say this. Mr. Hoover is here and he can answer that question, but I will say this to the Senators, that even the top officers of the Department

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have very rarely, if at all, ever seen the files, the raw files, of the Bureau of Investigation. When we want information from those files we request it of the Bureau and it is given to us in memorandum file, and we never go near the raw files because we hold them in such sacred trust.

Senator Hickenlooper. There are, nevertheless, people in your Department who can have, if occasion demands it in your judgment, access to those files.

Attorney General McGrath. Anyone can have access to the files that Mr. Hoover will permit to see the files or the Attorney General may direct that they be seen.

Senator Hickenlooper. Mr. Hoover is subordinate to you in the Department of Justice, is he not?

Attorney General McGrath. Yes, he is.

Senator Hickenlooper. Therefore your orders to him would be controlling in his official actions, would they not?

Attorney General McGrath. I don't think I would give Mr. Hoover any orders. I think we would counsel together and I am sure we would come to the same conclusions.

Senator Hickenlooper. I understand your relationships are very cordial. I am asking a question with regard to the technical flow, the chain of command. If you issue an order in your official capacity to him in his, it would be his duty as a subordinate department within your department to obey that order, would it not?

Attorney General McGrath. I believe it would be, and I believe Mr. Hoover would obey it.

Senator Hickenlooper. I have no doubt he would.

Now then, may I ask you this: Do you consider the turning over of certain specific files for confidential information, without any proposition of making those files public, to a subcommittee of, for instance, the Foreign Relations Committee of the Senate, to be a hazard and a risk of publicity of those files that exceeds the hazard and risk of publicity of subordinate employees in the Federal Bureau of Investigation or in other departments of your Department which might have access to them?

Attorney General McGrath. I am not going to pass judgment on the integrity of this committee or any other committee of Congress. I say that there is great risk involved in breaking the principle that these files should not be made available.

Senator Hickenlooper. General McGrath, let me ask you this question: Do you know whether or not confidential investigative files have ever been turned over for access to congressional committees and for examination by congressional committees?

Attorney General McGrath. I think I may say with certainty that the raw files have never been turned over. There have from time to time been submitted to committees

reports prepared by the Federal Bureau of Investigation indicating the information that may be contained in the files.

Senator Hickenlooper. Are you aware whether or not the Judiciary Committee of the Senate has for a number of years requested and received investigative reports, especially in the case of Federal judges, from the Federal Bureau of Investigation?

Attorney General McGrath. It does with the authorization of the President and the approval of the Attorney General. That is quite a different situation. When a man presents himself for the favor of a presidential appointment to the judiciary of the United States, we feel that he should be willing that that be done, and that no damage can come to him. He should be willing to have the committee which passes on his qualifications for this lifetime job see his file. In that instance an exception is made and the Chairman of the Judiciary Committee is permitted to see a summary of the file as prepared by the Federal Bureau of Investigation, not the raw file. Never the raw file.

Senator Tydings. Do I understand you to say that in the case of these judges the raw file is not turned over, only a summary of what is in the file?

Attorney General McGrath. That is correct.

Senator Hickenlooper. In pursuing that just a step

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further, by the "raw file" I take it you mean the file containing the actual names and identification, for instance, of all informants; in other words, the complete background of all information.

Attorney General McGrath. I mean by the raw file everything that the Department has on the subject of an investigation goes into the file--the notes of the interviews, statements that are made by those that are interviewed, exhibits, all such material as that goes into what we call the raw file. These raw files in some instances run into many volumes and into many filing cabinets.

Senator Hickenlooper. But in the summary of these files, which may or may not contain actual names of informants, for instance, all of the information in the raw file is presumably digested for the information of those who examine the digest and the report.

Attorney General McGrath. It is evaluated, yes, and put into a narrative form.

Senator Hickenlooper. And do you know whether Appropriations Committees of the House and Senate have on occasion been given access to the investigative files of the Federal Bureau of Investigation?

Attorney General McGrath. Not to my knowledge. I have no knowledge that that is so.

Senator Hickenlooper. General McGrath, I notice in

your statement that there runs through it consistently in the precedents "resisting the turning over of investigative files or summaries of these files". By the way, I take it that your objection would go just the same to turning over the summarization of the files, as is customarily done, for instance, for the Judiciary Committee. Your objection would go just the same to turning over a summarization of the files by the Federal Bureau of Investigation to this subcommittee?

Attorney General McGrath. I think the situation is different here than it is in the case of the Judiciary Committee considering the life appointment of a Federal judge. My objection runs to turning over a summary of the file.

Senator Hickenlooper. I say this without any declaration one way or the other, but it is entirely possible that there are occasions when the very lifeblood of this country depends upon certain information which may be acquired in proper places, as well as the lifetime appointment of a judge.

Attorney General McGrath. Such a situation could arise and the President has the power to make an exception if he sees fit to do it.

I was going to suggest that we are probably covering some ground that may be the subject of the Director's testimony, and while I am merely suggesting to you that Mr. Hoover be permitted to make his statement and I shall be glad to answer any questions after that, I only make that suggestion in the

interest of probably saving some time, as he in discussing the procedures of his Department may have the answers to some of these questions.

Senator Hickenlooper. I have just a few other questions, but then other members of the committee may want to question the General, and I do not want to take an undue amount of time at this time.

Senator Tydings. Proceed in any way you wish, but I would like to say Mr. Hoover will testify immediately following General McGrath, and many of the technical things Mr. Hoover could perhaps answer in more detailed fashion than General McGrath. Whatever way you wish to proceed will be proper.

Senator Hickenlooper. Especially with reference to the matter I was mentioning a moment ago, about the confidential nature of the receipt of information in these files, at the bottom of page 8 you again emphasize as follows: "With respect to files which this Committee has requested, their disclosure would, it seems to me, seriously impair the effectiveness of the Employee Loyalty Program."

Attorney General McGrath. That is correct.

Senator Hickenlooper. I merely emphasize that because so much of the objection to this has been bottomed on the fact that this subcommittee is going to take the files and disclose what is in the files.

Attorney General McGrath. This committee has requested access to the raw files and it has requested the right of its staff members to go into its files, and that we very strongly object to.

Senator Hickenlooper. May I ask you this: If the subcommittee modified its request and said "We want to have delivered to us for our examination the customary and standard summarization of the raw files, such as is ordinarily made up by the Federal Bureau of Investigation for these various groups", would that change the picture any?

Attorney General McGrath. It doesn't to my mind. I would like you to direct that question to Mr. Hoover after he finishes his statement.

Senator Hickenlooper. The Federal Bureau of Investigation is not a constitutional department, isn't that true? It was, that is, created by an Act of Congress? It has a longer history than that, but it is now operating as a result of legislative recognition?

Attorney General McGrath. It is part of the Executive Branch of the Government.

Senator Hickenlooper. And it gets its authority as a result of statute at the present time?

Attorney General McGrath. The same way that the Department of Justice gets its authority. It was created by an Act of Congress.

Senator Hickenlooper. Could the Congress abolish the Federal Bureau of Investigation and its activities, do you believe?

Attorney General McGrath. Yes, it could, and it could abolish the Department of Justice if it wishes to.

Senator Hickenlooper. Could it abolish the Civil Service Commission by an Act of Congress?

Attorney General McGrath. Yes, it could.

Senator Hickenlooper. Do you hold that the Congress can direct the duties and the activities of departments and agencies which it has the authority to set up?

Attorney General McGrath. Congress can make the laws that govern the executive agencies. The President administers those laws.

Senator Hickenlooper. And, for instance, I take it that you agree that Congress in setting up an agency, or a department, even though Congress may elect to put that department under the Executive Branch of government for convenience of administration or for other purposes, has the right, in the law that sets up that department, to prescribe the duties of that department which it creates?

Attorney General McGrath. It can prescribe them within the limits of the Constitution. If it creates an executive agency it must leave it to the President to administer that agency. It can not keep it within the Legislative Branch. If

the Congress wished to create a Bureau of Investigation that was part of the Legislative Branch of Government, I suppose it could do that, if it would justify its need as an aid to the functions of the Legislative Branch. It has not seen fit to do that, however. It has created an independent agency in the Executive Branch, and therefore, under the Constitution the power of administration passes on to the President.

Senator Hickenlooper. Do you consider that Congress in setting up an agency of government can require that agency to make reports to Congress periodically?

Attorney General McGrath. It can go to some extent. It can not go to the extent which is indicated here by your request for files of this kind. I think that would be decided by the courts to be an encroachment upon the executive function. I think such an attempt would be struck down.

Senator Hickenlooper. Do you believe that Congress could create an investigative agency and in the Act creating it say that it shall investigate and inquire into certain activities of individuals and businesses and make periodic reports to the Congress, meanwhile putting that agency in the Executive Department for administrative purposes?

Attorney General McGrath. No. If it puts it in the Executive Branch, then it can not require it to give its reports to the Congress unless the President sees fit to permit it. If the Congress wishes an agency of that kind, it can

establish it as part of the Legislative Branch of Government, and then the Executive has no control over it whatsoever.

Senator Hickenlooper. Then I take it that the reports of the Immigration Service and of the Federal Communications Commission and all of the rest of the agencies of government that are required by law to make periodic reports to the Congress are being made only at the sufferance of the President, according to your view?

Attorney General McGrath. The President could make a finding that it was not in the public interest in a particular instance to make those reports available and prevent them from being made. He would have to make that finding, however. It is not reasonable to suppose that a President is going to make a finding in matters of that kind. He has to reach the conclusion that the making of a particular report is or is not in the public interest.

I may remind the members of the committee that the Congress itself is pretty jealous of its prerogatives. Only two weeks ago one of the Federal courts issued a subpoena to the House of Representatives to produce the minutes of a meeting of a committee of the House of Representatives, and the committee politely refused to submit to the subpoena, and sent word to the court that the Judicial Branch of the Government had no control over the Legislative Branch, and indeed I am sure the committee of the House of Representatives was correct.

Senator Hickenlooper. Well, I don't care to argue that point, particularly. I call your attention to the fact that these federal agencies that we have been referring to have been created by the Congress and their duties have been prescribed by the Congress. The Congress was not created by this Federal court, and it does not get its authority nor its power from the Federal Court.

Attorney General McGrath. Once Congress conceives them and brings them into being, they take on a different character. Once Congress is through with the law creating them, they then pass to the control of the Executive, and they are from thence forth part of the Executive Branch of the Government, which is quite independent of the Legislative Branch.

Senator Hickenlooper. I suppose that the legal interpretation of that would have to rest with the courts anyway, and I do not care to burden you with further discussion on this matter.

Attorney General McGrath. I think the courts have been passing on that for 150 years, and there isn't a dissent that I know of.

Senator Hickenlooper. I think that there is very excellent argument that does not quite sustain your position, but then there is argument that can be used to sustain it also.

It is a close question, and I think this particular question has never been squarely passed on by the courts. But

I merely wanted to get the position of your Department firmly fixed as to your Department's rejection of the request of this subcommittee for a delivery of either the raw files or, wanting that, the summarized files, which are not so-called raw files of the Department.

I believe that that is all the questions I have.

Senator Tydings. Senator McMahon, have you any questions?

Senator McMahon. I have a question or two for the Attorney General, but I would prefer to ask him after Mr. Hoover finishes his testimony.

Senator Tydings. Will you remain with us until Mr. Hoover finishes his testimony, Mr. McGrath?

Attorney General McGrath. I certainly will.

Senator Tydings. Senator Lodge, have you any questions?

Senator Lodge. Yes, I have one.

Senator Tydings. Go ahead.

Senator Lodge. Have the raw files ever been made available to a court?

Attorney General McGrath. In the Coplon case. I think perhaps Mr. Hoover can answer that. No request has ever come to me since I have been Attorney General for a raw file, but Mr. Hoover has had twenty-five years' or more experience in these matters, and he probably would be able to answer your question.

Senator Lodge. I wondered if there was any inconsistency

between their making the raw file available to the court and not making it available to the Congress.

Attorney General McGrath. If it was made available in the Coplon trial, and I am not sure that it was, it would have been done with the consent of the President via the Attorney General. I happen to know there were considerable differences of opinion as to whether the Government should have made as many files available in that case as it did. Whether it was the complete raw file or not, I don't know.

Senator Lodge. Your statement applies only, does it not, to FBI files, and not to State Department files or Civil Service files?

Attorney General McGrath. Oh, yes, Senator. I have nothing to do with the files of the other departments, except that we would object to your securing those files if they contained our FBI reports, which I think they do, because the FBI is the agency that does all of the investigating for the loyalty program. We would have no objection, of course, to your obtaining the personnel files of any department. We have no objection to your obtaining the Civil Service Commission files on employees, so long as those files contain no part of the Federal Bureau of Investigation's work.

Senator Lodge. Thank you. That is all.

Senator Tydings. Mr. Hoover, will you rise and hold up your right hand?

Do you solemnly promise that the evidence you shall give in this case as outlined in Senate Resolution 231 shall be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. Hoover. I do.

Senator Tydings. Take a seat, sir.

Before you begin testifying, M. Hoover, I want to take this occasion to thank both Attorney General McGrath and you, sir, for accepting my invitation to come up here today and give your personal viewpoints on the matter that is pending before this committee.

Senator Hickenlooper. Mr. Chairman, just before Mr. Hoover testifies, I was handed a memorandum at the door as I came in from Senator McCarthy's office. It is as follows, on his stationery:

"MEMORANDUM

"TO: Senator Bourke Hickenlooper

"FROM: Senator Joe McCarthy

"I would appreciate it very much if you would inform J. Edgar Hoover that I deeply regret that I shall be unable to hear his testimony this afternoon because of the fact that I am completely and inescapably tied up with the preparation of material which I expect to present on the Senate floor tomorrow.

"I am sure that Mr. Hoover will understand that my absence under the circumstances does not even remotely indicate any

lack of interest in his testimony. I shall obtain his testimony at the earliest possible moment for careful study.

"Will you also inform Mr. Hoover that I shall greatly appreciate it if he will have one of his agents available when I address the Senate tomorrow so that I may turn over to him documents in the Lattimore case which I consider of some importance. Thank you.

(Signed) "Joe McCarthy"

Mr. Hoover. That request will be complied with.

Senator Tydings. Mr. Hoover, will you proceed in your own way? We will not interrupt you.

STATEMENT OF THE HONORABLE J. EDGAR HOOVER,

DIRECTOR, FEDERAL BUREAU OF INVESTIGATION

Mr. Hoover. In the twenty-six years which I have been privileged to serve as Director of the Federal Bureau of Investigation, I have always maintained the view that if we were to fully discharge the serious responsibilities imposed upon us, the confidential character of our files must be inviolate.

A cardinal principle of success for any agency having a responsibility for investigations is its ability to secure information. To do that, it must be able to maintain confidence. Any person furnishing information must have the security of knowing that when he furnishes information on a confidential basis, he will not at a later date find that

confidence broken. When that occurs, the ability of the investigative agency to discharge its responsibilities in the future is materially lessened.

The public record clearly proves that the Federal Bureau of Investigation, because it does maintain confidences, has been able to develop valuable sources of information which have a direct bearing on the internal security of the nation. I need refer only to the government witnesses who testified in the trial of the eleven Communist leaders in New York last summer. Seven of these witnesses risked their lives as undercover employees of the FBI.

The question of opening the files of the FBI involves a grave matter of principle. In taking the position that the files of the FBI should remain inviolate I would not, of course, presume to discuss files other than those of the Federal Bureau of Investigation.

These files contain complaints, allegations, facts, and statements of all persons interviewed. Depending upon the purpose of the investigation, particularly in security cases, they contain not only background data on the individual but details of his private life which bear upon the investigation. In these files also are the identities of our confidential sources of information and full details of investigative techniques. In short, they consist of a running account of all that transpires.

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A file is maintained in each case because the FBI has received information, allegations, or a complaint which if proven comes within the sphere of our responsibility, in pursuance of either Congressional or Executive directives. After the investigation is completed, when indicated by Department procedure or judgment, a summary of the facts developed is furnished to the Department of Justice and to United States Attorneys. In other types of investigations, the reports of special agents are submitted to the interested agency of the Government. Details and information dealing with administrative operations and confidential sources of information remain in our files. The contents of these files were never intended to be disclosed and, unless we drastically change and circumscribe our procedures, they should not be disclosed.

The question of divulging contents of the files of agencies of government is not a new one. When confronted with the question of divulging the files of an Executive Department in 1909, the late President Theodore Roosevelt said:

"Some of these facts. . . . were given to the Government under the seal of secrecy and can not be divulged and I will see to it that the word of this Government to the individual is kept sacred."

The disclosure of the contents of the files of the FBI would reveal confidential procedures and techniques. If spread upon the record, criminals, foreign agents, subversives, and

others would be forewarned and would seek methods to carry out their activities by avoiding detection and thus defeat the very purposes for which the FBI was created. Each exception undermines this principle, establishes a precedent, and would result in a complete collapse of a traditional policy which has proven its soundness.

A disclosure of FBI reports would reveal the identity of confidential sources of information and, if it did not place the lives of such persons in actual jeopardy, it would certainly ruin their future value and effectiveness.

The disclosure of FBI reports would make otherwise patriotic citizens reluctant to furnish information. Already, as a result of some unfortunate disclosures of our files in court proceedings, our Special Agents frequently are being told by persons from whom they seek information that they will decline to be interviewed for fear the information will be misused by some agency other than the FBI.

In the conduct of official investigations, information of a highly restricted nature having a direct bearing upon national security often finds its way into the files, which, if disclosed, would be of considerable value to a foreign power. Increasingly, we have observed efforts of a foreign power to seek intimate personal details concerning many of our leaders in Government and industry. They should not be aided by having these details made public for their use and advantage,

thereby crippling the important work of the FBI.

So far, I have directed my remarks against a disclosure of FBI files on security grounds. There are other compelling reasons why the files of the FBI should be inviolate. For the want of a more apt comparison, our files can be compared to the notes of a newspaper reporter before he has culled through the printable material from the unprintable. The files do not consist of proven information alone. The files must be viewed as a whole. One report may allege crimes of a most despicable type, and the truth or falsity of these charges may not emerge until several reports are studied, further investigation made and the wheat separated from the chaff.

I, for one, would want no part of an investigative organization which had the power of discretion to decide what information would be reported and what would be omitted. An item of information which appears unimportant today may provide the solution of a case when considered with information received at a later date, or it may later establish the innocence of the accused.

Should a given file be disclosed, the issue would be a far broader one than concerns the subject of the investigation. Names of persons who by force of circumstance entered into the investigation might well be innocent of any wrong. To publicize their names without the explanation of their associations would be a grave injustice. Even though they were given an

opportunity to later give their explanation, the fact remains that truth seldom, if ever, catches up with charges. I would not want to be a party to any action which would "smear" innocent individuals for the rest of their lives. We cannot disregard the fundamental principles of common decency and the application of basic American rights of fair play in the administration of the Federal Bureau of Investigation.

The FBI has the obligation, within the scope of Federal law, not only to protect the rights, lives, and property of our citizens, but also to protect the confidential relationship of the citizen when he patriotically serves his Government by providing information essential to our security.

FBI reports set forth all details secured from a witness. If those details were disclosed, they could become subject to misinterpretation, they could be quoted out of context, or they could be used to thwart truth, distort half truths, and misrepresent facts. The raw material, the allegations, the details of associations and compilation of information in FBI files must be considered as a whole. They are of value to an investigator in the discharge of his duty. These files were never intended to be used in any other manner and the public interest would not be served by the disclosure of their contents.

In taking this stand, I want to reiterate that a principle is involved. I would take this same stand before the Attorney General, as I already have, or before any other body. The fact

that I have great respect, confidence, and a desire to be of assistance to a committee of distinguished Senators, however, in no way detracts from a principle. I say this because I do not want any misinterpretation of my remarks, nor do I want it said that this and other committees of Congress do not have my respect and confidence. I would, however, be derelict to my duty, untrue to my conscience, and unworthy of my trust if I took any other position.

Senator Tydings. Thank you, Mr. Hoover.

Senator Green?

Senator Green. Mr. Hoover, there has been a good deal of evidence, although no direct statement, to the effect that the process of screening these respective individuals is entirely inadequate. Will you give the committee a description of what screening is done from the bottom up?

Mr. Hoover. Do you mean in these loyalty cases? Are you referring to those?

Senator Green. Yes.

Mr. Hoover. In the loyalty cases the procedure which is followed is for the Civil Service Commission to send to us various loyalty forms of the employees of the Government. Those forms are first searched in the files of the FBI against the names, what we call the name file, and if under ^{IN the} ~~the~~ name ^{check} ~~index~~ there is found any reference to subversive activities, or activities of a disloyal character, that loyalty form is

returned to the Civil Service Commission with the notation that an investigation has been opened. If there has been no disloyalty information developed from that check, the notation is made "No disloyal ^{data - FBI files} ~~information ascertained.~~"

In the first group of cases, those upon which we find subversive activities, we initiate a full field investigation. A case is sent out to ^{our appropriate} ~~the respective~~ offices ~~where the man~~ ~~lives or the employee lives~~, and ~~various~~ information is developed as to his background, ^{and} ~~predicated upon~~ these allegations which are or may already be in the files of the FBI. Those reports are sent in to the Bureau and are there reviewed.

The report as you see it in the Bureau, the working file or the raw file, will contain the identity of all informants, the source of the information it has been received from, the method by which it has been received. That report is then digested, ~~and reduced to a so-called summary or an analysis of the file,~~

and ~~in turn~~ transmitted to the Civil Service Commission. ^{Administrative details and confidential sources remain in our files} ~~with~~

In the cases where informants are willing to appear and testify, their identities are set forth. In cases where they do not wish to have their identities disclosed, ^{they are} ~~it is~~ designated by a ^{symbol.} ~~number.~~

I may say for your benefit, Senator Green, that that procedure of not disclosing the informant was not my decision, it was the decision of the Presidential Loyalty Review Board, and they decided that the identities would be kept confidential

in those cases in which the informant desired that there was anything to be kept in such confidence.

These reports upon a particular case go to the Civil Service Commission. They in turn, I understand, refer them to the agency of the Government in which the employee is at the time assigned, and that agency will review those reports and the Loyalty Board will in due time have a hearing and accord the employee the opportunity to be present with counsel and to answer such questions and charges as the Board may prefer. If they desire any agent of the Federal Bureau of Investigation to appear at those hearings to testify as to matters of which the agent may have first^{hand} knowledge, and not hearsay, ^{information} agents have appeared and ~~so~~ testified.

Then the employee, if he is found to be disloyal under the Presidential directive, has a right of appeal to the Presidential Loyalty Board. That is a very general statement. There are a lot of minor steps I skipped for brevity purposes.

Senator Green. That is a rather elaborate course of screening.

Mr. Hoover. Yes, I would say it is a rather elaborate course of screening.

Senator Green. Is it a course which you would say was easily adopted?

Mr. Hoover. I think it was the most practical program that could be adopted at the time it was adopted. Maybe there

are a few kinks in the program that could be ironed out. The President has at all times been studying that. I know very recently he requested the Attorney General and myself to offer any suggestions or views that would be of assistance toward improving or tightening that program. We have given earnest consideration to that. I think all in all it was a very fair procedure.

In the early stages of the loyalty program, Senator Green, there was a great hue and cry on the part of some of these pseudo liberals that it was a so-called "thought control" or "thought policing". It has been found after checking over 2,000,000 loyalty forms that there have been very few abuses, if any, that have actually taken place, either in the investigating or the hearings that have been reported, and in the investigations where there was some minor slip, corrective measures have been, of course, taken.

I think it has worked very well and I think that is the consensus of the better thinking members of the press who have had an opportunity to view it and observe it first hand.

Senator Green. I thank you very much for that statement, because I think it will restore confidence on the part of a great many people where it has been somewhat shaken.

Senator Tydings. Senator Hickenlooper?

Senator Hickenlooper. I notice again in your statement, as I noticed in the Attorney General's statement, a repeated and

continued emphasis upon the opening of files for public disclosure. It has never been my thought as a member of this committee, and I have heard no mention on the part of the sub-committee, that any of these files were to be opened by this committee for public disclosure. Also, the question of so-called raw files has come up in the Attorney General's statement.

As you stated a moment ago, I believe that you either symbolize or give reference by number to the source of information on the part of those people who do not like to have their names disclosed.

Mr. Hoover. That is correct, and when we submit that report to the Civil Service Commission in the loyalty cases it is a summary of the file ^{investigation} in the Bureau.

Senator Hickenlooper. A great many of your reports adequately serve the purpose when they are in fact summaries of all the information which you have gathered about an individual. Is that not the case?

Mr. Hoover. I would assume that that is the case. We have had very few complaints about it.

Senator Hickenlooper. Are you aware of loyalty files that have been made available to individual members of Congress or to Congressional committees of either the House or the Senate?

Mr. Hoover. By whom?

Senator Hickenlooper. FBI reports or files.

Mr. Hoover. By whom? Just a minute. Who made the files available to members of Congress? Not anybody in the FBI ever made them available.

Senator Hickenlooper. I did not ask about the individual I said, are you aware of any occasions when FBI investigative files have been made available by anybody to Congressional committees or to individual members of Congress?

Mr. Hoover. I am not aware of any loyalty reports being made available ^{to} ~~by~~ any committee ^{by} ~~or~~ any agency or any individual in the government, because there is a direct Presidential directive prohibiting it. I know in so far as the Federal Bureau of Investigation is concerned, no confidential reports of that Bureau have ever been made available to anybody.

Senator Hickenlooper. What is the situation about the Senate Judiciary Committee in connection with the investigation of Federal judges?

Mr. Hoover. In connection with the Senate Judiciary Committee, there is again a so-called summarization of a file. The raw file is not made available to the committee, by reason of the fact as the Attorney General has explained this afternoon, that there is a different principle involved in making available to a committee passing on the qualifications for confirmation of a man to a judicial post than there is involved in this over-all problem of internal security.

Senator Hickenlooper. Do you consider that problem more

important than the question of making available information to a committee that is trying to investigate alleged subversive activities which may go to the heart of the national defense or our whole national security?

Mr. Hoover. I am not endeavoring to evaluate which is the most important or which is the least important, Senator. I am stating to you that as Director of the Bureau, in the years I have been Director I have consistently urged the Department not to yield access to these raw working files or to the summaries in the internal security cases. I can be overruled in that opinion by the Attorney General or the President. Up to the present time the Attorneys General have supported that and the various Presidents have supported that position. I think there is a great difference between an active file; a file that is in question before this committee upon which this committee was seeking access to the records is an active working file in current investigation. I do not think that file should be made available to you.

Senator Hickenlooper. In the event this committee made it clear that what the committee was seeking was an accurate summarization of the active working file, rather than the active working file itself--

Senator Green. May I draw my distinguished colleague's attention to the fact that we were directed to obtain by subpoena, if necessary, and examine, the complete loyalty and

employment files and records of government employees in the Department of State, and so forth? Nothing was said about summaries.

Senator Hickenlooper. Getting back to the question that I was asking you, Mr. Hoover--

Mr. Hoover. I will answer the question, Senator, that I would certainly recommend to the Attorney General that any summarization not be made available to the committee in an active internal security case, for the very reason that even though we summarize the file, the person reading that summary could very readily draw certain conclusions and deductions therefrom as to where the information might have been obtained. It might be to the embarrassment of informants, and again it is a matter of principle and one of degree. I have the utmost respect for this committee ^{and} ~~or~~ for its integrity, but if we yield in this one case we break a precedent that will plague the Department and certainly, I think, materially interfere with the efficient operation of the FBI in future years to come. Other committees will ask for it. It is entirely within the realm of possibility, maybe not probability, that there might be a committee in which we would not have the same confidence we have in this committee. There have to be certain principles set and adhered to or the floodgates will be opened.

Senator Hickenlooper. May I ask you, Mr. Hoover, a question I asked the Attorney General, which he said you were

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better qualified to answer, and I believe that is true. How many clerks and stenographic personnel and other people have access to the information, or at least substantial parts of the information, that are contained in these files, by way of compilation?

Mr. Hoover. I would say, Senator, that there would be probably not more than half a dozen. That would be a maximum number, a half dozen employees of the Bureau who would have access to the entire, whole working file. There are many clerks who will file certain papers into a certain file and will make an index card, but the file is restricted to requests from a particular supervisor or supervisors who are supervising that case, and from the Assistant Director in charge of that division and myself. The file is not allowed to be examined by any clerk or employee just for the purpose of curiosity.

I may also say, Senator, that each one of those employees of the Bureau has been thoroughly investigated as to their integrity, their loyalty, and as to their security risk, and we have never had a leak from those files. I don't mean to infer that any committee on the Hill or any of its staff may be not as good a security risk as our employees, but I do not know whether they have been investigated, I do not know whether they have been checked as thoroughly as our people, and again, as I say, the danger of a leak from the Bureau--and I do not

say it is beyond the possibility of a leak in an organization that has 10,000 employees, but to date we have never had that occur to us.

Senator Hickenlooper. I might suggest, Mr. Hoover, that there are at least two or three members of this committee, I think, that have had access to a great many files. The Senator from Connecticut and I have had access to many files of the Atomic Energy Commission that are investigative files. I believe the Senator from Maryland has had access to certain files and information, and I do not believe any of us as a result of that have leaked any information. I do not know about Senator Green or Senator Lodge.

Senator Tydings. Just for the record in case there is a leak, the Senator from Maryland has not read any of these summaries, purposely.

Mr. Hoover I want to make it very clear that I am not insinuating any lack of security on the part of this committee. As I tried to treat the point in my statement, it is a matter of principle and if we yield in this particular request of this committee, which probably has members equally secure as any high officials in Government, you are setting a precedent and opening a floodgate that is going to plague the Department of Justice and materially interfere with the security work of the FBI.

Senator Hickenlooper. I an understand your zeal, Mr.

Hoover, in the inviolate protection of your files and your investigative procedures. But I do want to observe that this committee has been specifically charged with investigating certain allegations and charges. It is beyond my conception as to how this committee can investigate the subject matter of the individuals charged, in their own interest and in the interest of the public, now that the charges have been made, if we are denied and have the door shut in our faces on information, pro or con, which is officially in the hands of the Government, but which we cannot see and which we can not use in evaluating the merits or the demerits of this investigation. That is the impasse to which we seem to have come, and I would be the last one- I am not perhaps the last one; I do not mean to discredit anyone else. There are a great many other people that would defend the integrity of your files and the integrity of your investigative system to the utmost. I am perfectly willing to do that. But I am anxious for someone to tell me how I can discharge my responsibilities as a member of this subcommittee when I do not have access to information in the hands of the Government upon which to make up my own independent judgment as to the merits or the demerites of these charges. That is the impasse that confronts me as a member of this committee, and I personally feel that there is not only no intention, but no possibility, of any disclosure of specific information in any of these files that would be made

by this subcommittee unless and until full consultation and agreement with the proper authorities had been later had that such disclosure was all right.

Mr. Hoover. I agree with you in that conclusion. On the first I can not give you any assistance, as to how to break that impasse.

Senator Hickenlooper. I sadly agree that you can not give me any assistance on that.

Senator Tydings. I am going to defer to my colleagues in asking questions and save mine until the last, but I would like to ask you one question about something you have touched on with reference to judges.

I would assume that one reason these summaries of the FBI files are made known in the case of an applicant for appointment to be a United States judge, whether it be for one of the lower United States courts or the highest, would be predicated on the fact that once he has assumed office, he can not be gotten off the bench except by death, retirement, or impeachment, whereas in the case of all other individuals who work for the Government who are not elected, they can be discharged or released without that situation requiring impeachment. Is that one of the reasons, in your opinion, for this exception to what might be called the strictness of the FBI in not disclosing the files?

Mr. Hoover. I think the Attorney General can answer that

probably better than I.

Attorney General McGrath. It goes beyond that. The applicant for the job knows in advance that the FBI is going to make an investigation and the results of that investigation are going to be made known to proper officials. He is in a much different position when he seeks that position than is the non-innocent or innocent employee who is suddenly subjected to an investigation of his personal affairs without any desire on his part so to be investigated. I think that makes a big difference.

Senator Tydings. Furthermore, the judge sits with the power of life and death in many cases of the the citizens of the community, and I am reminded that after the Punic Wars, when Solon was commissioned to write the laws for ancient Greece, for the first time he gave the people the right to vote only for the judges who would sit upon their crimes and misdemeanors, for the reason that that is one thing above all others that must have every security thrown about it, and if people elect their own judges, obviously they must have confidence in their integrity, and that was the reason that was done.

Attorney General McGrath. May I say to you that the record of the Federal Bureau of Investigation and the Department with respect to prosecution of all those against whom sufficient evidence has been secured is a splendid one, but

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this is not the time to discuss that undertaking. There are facts built up from day to day that this committee is not aware of as a whole, and it may be before you conclude the work of this committee I should like to come back and review with you everything that has been done in this field by the Department of Justice, because I think it is a splendid record. That record is so good that if any member of the United States Senate thinks there are a lot of spies running around the United States, if he will tell us their names and a little information, we will soon bring them to justice.

Senator Tydings. Thank you.

Senator McMahon?

Senator McMahon. When was the loyalty program commenced, Mr. Hoover?

Mr. Hoover. In 1947, I think.

Senator McMahon. And under it all of the 2,000,000 employees of the Government have been checked?

Mr. Hoover. About 2,300,000 now, I think. That is, all of them have had a name check against the files of the Bureau. Of course they have not been investigated except in disloyal cases.

Senator McMahon. Can you tell us by whom this loyalty program was initiated?

Mr. Hoover. Originally the President named a committee, headed by Mr. Vanech, Assistant Attorney General of the

Department of Justice, and upon that committee was Secretary of the Navy Sullivan and Under Secretary of the Treasury Foley and representatives of various other branches of the Government, who conferred at great length and made recommendations to the President as to the procedures to be followed in this particular program. Then there was a consultation with the appropriate committees of the House for the granting of the appropriations on it.

Senator McMahon. I remember there was about a four months' delay before the money was appropriated after the program was formulated, if I am not mistaken.

Mr. Hoover. I think that is correct. The committees of the Congress gave it very careful study before the money was appropriated. I appeared before several of them on the House side.

Senator McMahon. Mr. Attorney General, you have just stated you do not consider it appropriate at this time to give us a review of the Department's work. I shall defer to your opinion as to its suitability at this time. It does seem to me, however, that since it is in this committee that charges have been made which have tended to shake confidence in the diligence of the Government's pursuit of wrongdoers, that it would be proper for you to briefly review some of the activities of the Department. I have in mind the eleven Communists in New York; I have in mind the successful

prosecution of Alger Hiss; I have further in mind the prosecution of Mr. Bridges. I do not know whether that case is successfully concluded. And also of those persons who were in contempt of the committees of Congress for refusing to answer questions concerning their Communistic affiliations.

I do not wish to press you on it, but those thoughts do occur to me, and it did seem appropriate to me that this was a place and a time in which proper reference to them could be made. However, if you feel that you wish to come back again, I do not press it.

Senator Hickenlooper. Mr. Chairman, I might say for the benefit of the Attorney General that there are a number of questions collateral perhaps to his statement today that I would like to discuss with him. I refrained from asking those questions because his statement was confined to a certain limited area, and if the matter is to be opened up I merely wanted to say that I would have a great many questions to ask.

Attorney General McGrath. Senator Hickenlooper, that is exactly what I meant when I said I didn't think that it was appropriate today. We are here to discuss one question, the question of these files. But there is a very splendid story that ought to be known, because I think it would give confidence to the members of Congress, I think it would give confidence to the public at large.

I may say that there is no instance in which the Federal

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Bureau of Investigation has completed a report involving disloyalty or subversiveness and referred it to the Attorney General where court action has not been instituted. And you may add to those you suggested that it was Mr. Hoover's organization that got the leads which resulted in the capture and arrest and conviction of Mr. Fuchs. Today we were successful in the prosecution of the Dennis case. We have a splendid record, and I think the country is entitled to know it, but I do not believe that while we are here to discuss this question of records that I ought to impose on the committee to talk about these matters, and I would like to come back at some future time and talk to the committee about what has been accomplished and to answer any questions that Senator Hickenlooper may have with respect to these matters.

Senator Tydings. Senator Lodge, have you some questions?

Senator Lodge. Yes. There is one point that I think ought to be definitely elucidated for the record. Let me say I think you made a very convincing exposition of your reasons for not setting a precedent, and for what you describe as a matter of principle. I think I heard you say that these raw files had not been made available to anybody. I think I am quoting you correctly.

Mr. Hoover. That is correct.

Senator Lodge. That prompts me to ask the question. Has the raw file not been made available to the courts in certain

cases?

Mr Hoover. There has been one instance ~~of~~ last year where certain very limited portions of the raw file were made available to the Court in the Coplon case. ^{Certain Reports} ~~That was~~ sealed for examination by the Judge in the last trial in New York City ^{IN THE} ~~of~~ Gubichev and Coplon ^{CASE.} In the trial in the District of Columbia there was introduced into that trial certain copies ^{of Reports} that had been forwarded to the Department of Justice, and abstracts had been made ^{From Them} ~~of it~~ by Judith Coplon, and were found in her possession at the time we arrested her in New York City.

That again showed the evil of making certain portions of that available to the Court, because in those files, just one or two reports taken out of a file of maybe 5,000 reports, there were mentioned the names of certain individuals. The President of a New England University was mentioned, and there were other very prominent people mentioned, upon whom there was cast an aspersion of subversive activities which had never been established or verified ~~or carried out~~ by the FBI, because we were not investigating that particular subject. Those reports were introduced in the court at the direct ruling of the Judge who presided, Judge Reeves in that case, and it was over the objection of the Attorney General and the Department of Justice representatives. That is the only case I know of.

Mr. Hoover. The portions of it that were made available in New York City were sealed. The Judge- Judge Ryan I think presided in this case--those reports were sealed and he examined them in chambers. He did have some discussion, I think,

with both the prosecuting United States Attorney and defense counsel. They were not made available in open court. The particular portions were sealed for the examination of the Court.

Senator Lodge. Were not parts of the raw file put in in the Washington trial?

Mr. Hoover. There were portions of the raw material that had been used in the Washington trial that were printed in the papers. On the excerpts that were made, the Court ruled that that whole portion of one report that she had abstracted had to be introduced for the information of the Court.

Senator Lodge. That was the only part that was available?

Mr. Hoover. The raw file in that case I think ran to ten or twelve thousand pages, and all that was produced was twelve or fourteen ^{Hundred} pages, to my recollection.

Senator Tydings. If you will allow me to pursue one or two questions, in your prepared remarks, on page 2, I see this sentence in the middle of the second paragraph: "A file is maintained in each case because the FBI has received information allegations, or a complaint which if proven comes within the sphere of our responsibility, in pursuance of either Congressional or Executive Directives." Then this: "After the investigation is completed, when indicated by Department procedure or judgment, a summary of the facts developed is furnished to the Department of Justice and to United States

Attorneys." In other words, I imagine when you think you have completed a file and have made out a case that violates any of the laws of our country, that file is then sent by you automatically to the Attorney General or the United States Attorneys, wherever the jurisdiction may lie, for proper action by the courts.

Mr. Hoover. Not the raw file. There is what is called a summary report, ^{made} and from the raw file ^{and} there will be withheld from that report the sources and other confidential information that we do not desire to disclose.

Senator Tydings. I did not mean to say the raw file. What I meant to say, you say "We have completed the case; the evidence is there, and we send the summary for you to work with."

Mr. Hoover. That is correct.

Senator Tydings. You do not need to answer this unless you want to, but I can see no harm in it. I would assume that if you have not sent a file forward in any particular case, it would be for the reason that the case itself does not show such a conclusive state that you could forward it to the proper agencies for legal action.

Mr. Hoover. That would be, I would say, Senator, in about 98 or 99 percent correct; for this reason do I reserve the two percent. There are cases which we bring to conclusion in which we may have direct evidence of a violation of law,

but for purposes of carrying on a so-called bringing into the ring it is not forwarded at that time. I recall the days of the Duquesne case at the beginning of the last World War in New York City, where we had one or two men at the very beginning that we were certain had violated the espionage statutes. We held that case back for eighteen months. When we went to trial we had thirty-three defendants, all of whom were convicted.

Senator Tydings. So that, except for the exception that you first enumerated, in each case where you feel you have gathered sufficient evidence you forward it then to the proper legal authorities for such action as is necessary.

Mr. Hoover. That is correct, Senator.

Senator Tydings. And there would be no completed case in your files showing a breach of any of the government's laws except for the reason you have given, that you would withhold it.

Mr. Hoover. That would be correct.

Senator Tydings. Thank you very much, Mr. Hoover.

Senator McMahon. There is one additional question I would like to ask.

Mr. Hoover, on the first page of your statement you say, at the bottom, "The question of opening the files of the FBI involves a grave matter of principle. In taking the position that the files of the FBI should remain inviolate, I

would not, of course, presume to discuss files other than those of the Federal Bureau of Investigation."

I assume that your feeling, however, would go to the files of other government departments that contain your reports?

Mr. Hoover. We have a very definite understanding with the other governmental agencies that no reports of the FBI which are sent to them, whether it be loyalty reports or reports on security of the War, Navy, Interior or Treasury, can be released by that agency upon request from any source without first clearing with the Federal Bureau of Investigation, and if there is any question in my mind as to the propriety of it, I submit it to the Attorney General.

Senator McMahon. That clears that up.

Senator Hickenlooper. Just one question that occurred to me that I do not think I quite followed up. I would like to ask Mr. Hoover this question. We were discussing the case of the Judiciary Committee of the Senate receiving summaries on Federal judges. Are you aware of any other instances where summaries developed by the FBI have been turned over to other committees of Congress?

Mr. Hoover. In the Atomic Energy cases that has been done by reason of the very unusual, and I think very satisfactory, procedure which we worked out for having a Joint Committee of Congress, ^{created} ~~under the law~~ ^{by} of Congress, having very

definite responsibility for the checking of the activities of the Atomic Energy Commission. In that instance the Attorney General approved the requests that were made for making available to the Joint Committee on Atomic Energy the summary reports in some of those cases. In each instance, however, they inquire of the Bureau as to whether there is any reason why this report should not be released at that particular time. There may be a current investigation going on, in which event we would not want it released.

Senator Hickenlooper. In those cases it is my understanding in connection with the Atomic Energy Commission that the FBI claims no supervision or dominion over any files once the file that is in the Atomic Energy Commission has actually gone into the custody of the Atomic Energy Commission.

Mr. Hoover. We do not claim high priority or interest in the file. We do claim a right to ^{be advised} ~~have it cleared with us~~ if any portion of the file which they have received from the Federal Bureau of Investigation is to be made available.

Senator Hickenlooper. I see.

Do you know of any other committee of Congress which has been given access to summary files developed by the Federal Bureau of Investigation other than the Atomic Energy Commission?

Mr. Hoover. I think in the case of the Committee on

Expenditures last year or the year before, headed by Senator Ferguson, there were certain ~~summary~~ files made available to that committee at the direction of the Attorney General in connection with the Kansas City election fraud causes. That is the only other instance I can recall that any files were made available. They have not been made available to the Appropriations Committees of either House of Congress.

Senator Hickenlooper. Or any other committee of the House or Senate?

Mr. Hoover. So far as my knowledge goes, no.

Senator Hickenlooper. That you know of.

Senator Tydings. I would like to thank you, General McGrath, and you, Mr. J. Edgar Hoover, both for coming up before us at our invitation and conferring on the matter before us.

In the event the Chairman may be absent for several days this week, I have designated Senator Green to act as Chairman so as not to delay the work of the committee.

(Whereupon, at 5:10 o'clock p.m. a recess was taken until 10:30 o'clock a.m. of the following day, Tuesday, March 28, 1950.)

DIRECTOR

FEDERAL BUREAU OF INVESTIGATION

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